

REMARKS

As a result of this amendment, claims 1-23 are pending in the application. Of these, claims 1-12 stand rejected under 35 U.S.C. §102 as anticipated or under 35 U.S.C. §103 as obvious.

A detailed response to these rejections follows. However, applicant reserves all applicable rights not expressly exercised in connection with this response, including, for example, the right to swear behind one or more cited references and the right to rebut characterizations of the references and asserted combinations or motives for combination. Applicant makes no admissions regarding the prior art status of any of the cited references. Unless expressly noted in these remarks, no amendments are intended to evidence disclaimer of any subject matter that applicant is entitled to.

Response to §102 Rejections

Claims 1-2, 4-5 and 10 were rejected under 35 U.S.C. §102(e) as being anticipated by Reshefsky (U.S. Patent No. 6,873,862). In response, applicant submits respectfully that one of skill would not regard Reshefsky as teaching each and every aspect of the claims as presently amended.

Regarding claims 1 and 2, applicant submits respectfully that independent claim 1 has been amended to require that the respective first and second input means are for electrically coupling to a two-way radio and to a mobile telephone. In contrast, Reshefsky only reports use of a cell phone and a music device.

Regarding claims 4 and 5, applicant submits respectfully that independent claim 5 has been amended to recite “means for comparing one of the first and second electrical signals to a threshold.” In contrast, Reshefsky appears to be entirely devoid of this feature.

Regarding claim 10, applicant submits respectfully that Reshefsky fails to teach any act that one of skill would regard as identical to the act of “attenuating the first audio signal in response to comparing the second audio signal to a reference.” The Action cites Reshefsky’s column 4, lines 22-26 as teaching this act. However, this passage merely states:

This is accomplished by a **simple switching circuit** built into the housing of the headphone with the port connection **which deactivates or prevents reception of the audio signal** from the auxiliary audio device 50 when the cellular telephone 40 begins to ring, vibrate or emit any form of programed [sic] audio signal

This passage appears to be entirely devoid any mention of anything one of skill would regard as attenuating in response to a comparison. In fact, the passage appears to teach away from the concept of attenuating a first signal by its use of description of “a simple switching circuit ... which deactivates or prevents reception of the audio signal from the auxiliary audio device.”

Accordingly, applicant requests respectfully that the Examiner reconsider and withdraw the §102 rejection of claims 1, 2, 4, 5, and 10.

Response to §103 Rejections based on Reshefsky and Larson

Claims 3, 6, 7-9 and 12 were rejected under 35 U.S.C. § 103(a) as unpatentable over Reshefsky in view of Larson (U.S. Patent No. 5,058,155).

Regarding claim 3, applicant submits respectfully that this claim stems from amended claim 1, which as highlighted above, distinguishes from Reshefsky for at least reciting a two-way radio and a mobile telephone. Larson does not appear and was not presented as teaching this aspect of claim 1. Thus, the rejection of claim 3 based on Reshefsky and Larson appears moot.

Regarding claims 7-9, applicant submits respectfully that even if the combination were permissible, it does not meet all the terms of these claims. Claims 7-9 recite a headset comprising “a microphone preamplifier,” “a battery terminal,” and “a circuit for coupling the microphone preamplifier to the battery terminal in response to electrical connection of the second input jack to the second source.” (Emphasis added.)

In the Action, the Examiner concedes that Reshefsky lacks the recited circuit, but asserts that Larson teaches this circuit. However, applicant’s study of Reshefsky indicates that it does not provide the recited circuit. Indeed, Larson appears to show two preamps, specifically preamps 24 and 32, have some control over so-called power switch 28. However, as described at column 5, lines 1-12:

the power switch, after a predetermined period of time during which the amplifier has been out of use, will reduce the power consumption to approximately 25% of the

consumption by normal working conditions. The power switch supplies power to the amplifier circuits through the wires 38. As soon as the amplifier is about to be used again, i.e, when the microphone signal in one of the preamplifiers 24 or 32 exceeds a certain level, the power switch will bring the circuits back to normal working conditions. As such, it does not appear that one of skill would regard Larson as teaching “coupling the microphone preamplifier to the battery terminal in response to electrical connection of the second input jack to the second source.”

Response to §103 Rejections based on Reshefsky and Burk

Claim 11 was rejected under 35 U.S.C. § 103(a) as unpatentable over Reshefsky in view of Burk (U.S. Patent No. 5,182,774).

In response, applicant submits respectfully that claim 11 stems from claim 10, and thus distinguishes from Reshefsky for at least the same reasons as claim 10. Thus, even it were permissible to combine Burk with Reshefsky as proposed, the resulting combination would appear to still distinguish.

Accordingly, applicant requests respectfully that the Examiner reconsider and withdraw the §103 rejection of claim 11.

CONCLUSION

In view of the amended claims, applicant respectfully requests that the Examiner reconsider and withdraw the rejections. Additionally, applicant invites the Examiner to initiate a telephone interview with its patent counsel Eduardo Drake at (612) 349-9593 to resolve any issues or discuss any amendments that might facilitate allowance of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

MICHAEL J. WURTZ

By his Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.

P.O. Box 2938

Minneapolis, MN 55402

(612) 349-9593

Date 4 Jan. 2005

By 

Eduardo E. Drake
Reg. No. 40,594

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 4th day of January, 2006.

Candis Buending

Name


Signature